

OKIE CRUDE CO., ET AL.
v.
MUSKOGEE AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 92-18-A, et al.

Decided February 5, 1993

Appeals from assessments of additional royalties on Osage oil and gas leases.

Reversed.

1. Indians: Generally--Regulations: Interpretation

Regulations are interpreted in accordance with traditional principles of statutory construction. Words used in regulations are given their plain and ordinary meaning unless they are technical terms or terms of art, in which case they are given their technical meaning.

2. Indians: Mineral Resources: Oil and Gas: Royalties--Words and Phrases

“Bona fide selling price,” “posted price,” and “offered price” are defined for purposes of 25 CFR Part 226.

3. Indians: Mineral Resources: Oil and Gas: Royalties

A sale price that is not offered to a producer is not an “offered price” as to that producer within the meaning and intent of 25 CFR 226.11(a)(2).

4. Indians: Mineral Resources: Oil and Gas: Royalties

For purposes of determining the amount of royalty due to the Osage Tribe under 25 CFR 226.11, the price paid pursuant to a contract for the future delivery of crude oil does not constitute an “offered price” on the actual date of purchase.

APPEARANCES: David C. Hopson, Dallas, Texas, for appellant Hyperion Energy; Benjamin P. Abney, Esq., and Douglas A. Wilson, Esq., Tulsa, Oklahoma, for appellants Melvin E. Acott, et al.; Bruce W. Robinett, Esq., Bartlesville, Oklahoma, for appellants A.E. Basinger, Jr., et al.; Martha L. Marshall, Esq., Oklahoma City, Oklahoma, for appellant Union Oil Co. of California; Jimmy E. Shamas, Jr., Esq., Denver, Colorado, for appellant Texaco Inc.;

and Tim Vollmann, Esq., Regional Solicitor, U.S. Department of the Interior, Tulsa, Oklahoma, and William E. Haney, Esq., Field Solicitor, U.S. Department of the Interior, Pawhuska, Oklahoma, for the Area Director.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellants Okie Crude Company, et al., 1/ seek review of October 21, 1991, decisions of the Muskogee Area Director, Bureau of Indian Affairs (BIA; Area Director), assessing additional royalties on oil and gas leases between appellants and the Osage Tribe (Tribe). For the reasons discussed below, the Board of Indian Appeals (Board) reverses those decisions.

Background

Appellants are lessees under oil and gas leases with the Tribe. Depending upon when the individual leases were entered into, appellants' leases were issued under authority of the Act of June 28, 1906, 34 Stat. 539, as amended by the Acts of March 2, 1929, 45 Stat. 1478; June 24, 1938, 52 Stat. 1034; and October 21, 1978, 92 Stat. 1660, and implementing regulations set forth in either Regulations to Govern the Leasing of Lands In the Osage Reservation, Okla., For Oil and Gas Mining Purposes, Form B, paragraph 2, Oil Mining Lease (1915); 25 CFR Part 183 (1974); or 25 CFR Part 226.

Regardless of the wording of the statute and/or regulations in effect when a specific lease was entered into, each lease provided for the payment of royalties to the Tribe. According to appellants, leases issued under the 1915 regulations provided that royalties "shall be based on the actual selling price, but at not less than the highest posted market price in the Mid-Continent oil field on the day of sale or removal;" leases issued under the 1974 regulations provided that royalties "shall be based on the actual selling price, or the highest posted or offered price by a major purchaser in the Kansas-Oklahoma area whichever is higher on the day of sale or removal" (25 CFR 183.2(a) (1974)); and leases issued under the 1990 regulations provided that royalties "shall be based on the highest of the bona fide selling price, posted or offered price by a major purchaser (as defined in § 226.1(h)) in Osage County, Oklahoma, who purchases production from Osage oil leases" (25 CFR 226.11(a)(2)).

At issue in this appeal is the effect of certain oil purchase contracts entered into by several producers and, apparently, Farmland Industries, Inc. (Farmland). 2/ As described by Farmland in a May 31, 1991, letter to the Tribal Council:

1/ Individual appellants and docket numbers are listed in Appendix A; multiple appellants appearing in Docket No. IBIA 92-95-A are listed in Appendix B; multiple appellants appearing in Docket No. IBIA 92-96-A are listed in Appendix C.

2/ The Oct. 21, 1991, decision letters state that the contracts were entered into by "certain 'major purchasers,'" without further identification.

Beginning in 1990, Farmland put its [forward crude oil purchase program (Program)] into effect. [3/] Under the Program, Farmland agreed to pay producers who participated in the Program the higher of Farmland's weighted average posted field price or a specified minimum price ("floor price") per barrel, whichever price was greater during the month of delivery. The forward floor price was based on the New York Mercantile Exchange (NYMEX) futures market price established at the time a forward contract between Farmland and a particular producer was entered into. The floor price was established at least sixty (60) days before actual oil delivery. Although the Farmland Program was complicated, it was based on Farmland's use of the NYMEX to hedge its crude oil purchases from Program participants. [4/] Because of certain NYMEX requirements, Farmland could only offer the Program to producers from which Farmland purchased significant quantities of crude oil since Farmland had to trade on the NYMEX in minimum lots of one thousand barrels of crude. Thus the program was not offered to every producer in Osage County.

* * * The objectives of the Farmland Program were as follows:

(1) Increase Farmland's lease crude purchases by offering producers access to the futures market without expense to such producers.

3/ A "forward contract" is "[a] contract on which a seller agrees to deliver a specified cash commodity to a buyer sometime in the future. In contrast to futures contracts, the terms of forward contracts are not standardized. Forward contracts are not traded on federally designated exchanges." National Futures Association, Glossary of Futures Terms, 1990, at page 10 (NFA Glossary). Thus, "forward contracting" is

"[a] cash transaction common in many industries, including commodity merchandising, in which a commercial buyer and seller agree upon delivery of a specified quality and quantity of goods at a specified future date. A price may be agreed upon in advance, or there may be agreement that the price will be determined at the time of delivery."

Commodity Futures Trading Commission, Glossary, 1991, at pages 28-29 (CFTC Glossary).

The term "forward market" "[r]efers to informal (non-exchange) trading of commodities to be delivered at a future date. Contracts for forward delivery are 'personalized,' (i.e., delivery time and amount are as determined between seller and customer)." Id. at 29. Finally, a "forward purchase or sale" is "[a] purchase or sale between commercial parties of an actual commodity for deferred delivery." Ibid.

4/ "Hedging" is "[t]he practice of offsetting the price risk inherent in any cash market position by taking an actual but opposite position in the futures market. Hedgers use the markets to protect their businesses from adverse price changes.: NFA Glossary at pages 11-12. In slightly different words, "hedging" is "[t]aking a position is a futures market opposite to a position held in the cash market to minimize the risk of financial loss from an adverse price change." CFTC Glossary at page 34.

- (2) Stimulate drilling by providing producers a guaranteed minimum price.
- (3) Increase Farmland's ability to plan for trucks and people in order to better coordinate transportation and lower transportation costs.
- (4) Enhance competition for oil.

(May 31, 1991, Letter at 1-2).

Attached to Farmland's letter is an unexecuted copy of a form "Lease Oil Production Purchase and Sale Letter Agreement." The Board assumes that this form agreement is the same as those that were executed between Farmland and some producers, and is essentially the same as any contracts that may have been executed between any other "major purchaser" and producers. 5/

5/ No executed copy of any purchase agreement appears in the administrative record. Exhibit 10 contains what is apparently a sample of Farmland's agreement, showing how such a form might be filled out. The agreement in Exhibit 10 shows only one side of the form. No copies of contracts entered into by any purchaser other than Farmland are included in the materials before the Board.

In preliminary filings, appellants sought supplementation of the administrative record with the Farmland contracts and information supporting a determination that Farmland and several other named purchasers of crude oil were "major purchasers" within the meaning of 25 CFR 226.11(a)(2). The Area Director indicated that these documents were not before him when he issued his decision. At page 3 of an Apr. 8, 1992, order addressing these and other preliminary matters, the Board stated:

"Appellants have the right to show how each of these documents is relevant or essential to the Area Director's decisions. Appellants should bear in mind, however, that the Area Director's decision must be adequately supported by the record and any further information provided during the course of this appeal. See 43 CFR 4.24(a)(4). The Board has not been reticent to vacate and remand BIA decisions that lack adequate support. See, e.g., Hopi Indian Tribe [v. Director, Office of Trust and Economic Development, 22 IBIA 10 (1992)]. If the information appellants request is determined to be relevant or essential for full review, and is not provided, it is the Area Director, not appellants, who will ultimately be harmed by its omission."

In the absence of any information from the Area Director about the nature of the contracts entered into by Farmland and/or any other "major purchasers," the assumption stated in the text will be made against the Area Director. For convenience, the Board will refer to all forward purchase contracts as being with Farmland. This decision, however, encompasses all such contracts that might have been entered into with respect to oil from the Osage mineral estate, regardless of the identity of the purchaser.

By February 1991, those producers who were participating in Farmland's program were apparently receiving prices for their production that were substantially higher than the then-prevailing posted and offered prices. It appears that royalties were paid to the Tribe based upon the actual selling price received under the program. 6/

The administrative record shows that the effect these agreements might have on the determination of royalties was discussed within BIA and the Tribe and among BIA, the Tribe, and at least some producers. On October 21, 1991, the Area Director issued the letters at issue in these appeals. Each letter assessed the recipient additional royalties. The form letter stated:

The attached sheet provides information as to the amount we have determined that you owe the Osage Tribe for additional royalty. This figure was calculated based on the regulation contained in 25 CFR Part 226.11, which says in part:

“... settlement shall be based on the highest of the bona fide selling price, posted or offered price by a major purchaser (as defined in Section 226.1(h)) in Osage County, Oklahoma, who purchases production from Osage oil leases.”

Prior to September 13, 1990, the wording of this section was slightly different, referring to the “highest posted or offered price by a major purchaser in the Kansas-Oklahoma area.”

This additional royalty is due because certain “major purchasers” made agreements with some of their sellers over a three-year period (1988 through 1991) whereby the purchaser offered and paid more for certain oil than the price commonly called the “highest posted price”. Each time such a transaction occurred, it had the effect of establishing that price as the royalty price for all oil in the Osage Mineral Estate. Therefore, each day one of these purchases took place, the royalty price was increased to the higher amount per barrel. If two such transactions occurred, the royalty price is considered to be the higher price of the two.

Several producers have argued that 25 CFR Part 226.14, which requires all purchase contracts for oil or gas be approved by the Superintendent, would serve to disallow these contracts and premiums, since none were approved by the Superintendent. We have

6/ Farmland's May 31, 1991, letter to the Tribal Council states at page 2:

“During the period of March and April, 1991, the floor price in Program contracts entered into between Farmland and certain Program participating producers in late 1990 and early 1991 exceeded Farmland's posted price and, indeed, exceeded the Osage Agency listed daily high price. Although Farmland paid royalties to the Osage Agency based on the higher floor price, producers who did not participate in the Program and received a lower price for their oil paid royalties only on such lower price.”

carefully considered this argument, but were unable to find that it would reduce or eliminate your liability in this matter. This section of the regulations, in question, is for the protection of the Osage Tribe of Indians, rather than for the oil and gas producers operating in the Osage Mineral Estate. It is intended to ensure that the Tribe receives royalties based on purchase contracts that are arms-length in nature, and thus indicative of market value. Further, the question as to the validity of any of these contracts does not alter the fact that oil was sold at the higher price during each of the periods involved. This “bona fide selling price” would establish the higher royalty price whether there was a contract or not on the oil.

The Board received numerous appeals from these letters. By order dated April 8, 1992, the Board established a joint briefing schedule for all appeals. Briefs were received from the appellants listed under the “Appearances” Section, supra. The appeals are consolidated for purposes of this decision. All arguments presented by appellants, whether contained in a notice of appeal or a brief, have been considered in reaching this decision.

Discussion and Conclusions

Although appellants raise numerous arguments against the Area Director’s decision, the Board finds that the central issue in this appeal is whether, under 25 CFR 226.11 and its predecessor regulations, the Area Director properly concluded that Farmland’s forward purchase floor price could be used as the basis for royalty determinations for any person other than a person participating in Farmland’s program. After comparing all cited versions of the regulation, the Board further finds that if the Area Director’s decision was improper under the present version of 25 CFR 226.11, it was also improper under the previous versions.

Farmland entered into contracts with certain producers for the forward purchase of crude oil. Although it appears that forward contracts had not previously been employed for oil produced from the Osage mineral estate, they are a well-recognized and accepted type of contract. See note 3, supra. Thus, it is appropriate to analyze the Area Director’s decision under general principles of contract law, as modified, if necessary, by the application of specific aspects of futures trading and/or forward contracting.

In pertinent part, 25 CFR 226.11 presently provides:

(a) Royalty on oil--(1) Royalty rate. Lessee shall pay or cause to be paid to the Superintendent [of the Osage Agency, BIA], as royalty, the sum of not less than 16 2/3 percent of the gross proceeds from sales after deducting the oil used by Lessee for development and operation purposes on the lease: * * *

(2) unless the Osage Tribal Council, with approval of the Secretary, shall elect to take the royalty in kind, payment is

owing at the time of sale or removal of the oil, except where payments are made on division orders, and settlement shall be based on the highest of the bona fide selling price, posted or offered price by a major purchaser (as defined in § 226.1(h)) in Osage County, Oklahoma, who purchases production from Osage oil leases.

25 CFR 226.1(h) defines “major purchaser” as

any one of the minimum number of purchasers taking 95 percent of the oil in Osage County, Oklahoma. Any oil purchased by a purchaser from itself, its subsidiaries, associations, or other corporations in which it has a financial or management interest shall be excluded from the determination of a major purchaser.

[1, 2] Because the terms “bona fide selling price,” “posted price,” and “offered price” are not defined in 25 CFR Part 226, the Board must determine their meaning. In so doing, the Board notes that “[r]egulations are interpreted in accordance with traditional principles of statutory construction.” Solano Garbage Co. v. Cheney, 779 F. Supp. 477, 487 (E.D. Cal. 1991). In particular, “[t]he words used in the regulation are to be given their plain and ordinary meaning.” Diaz v. United States Immigration & Naturalization Service, 648 F. Supp. 638, 644 (E.D. Cal. 1986). See also Colorado Department of Labor & Employment v. United States Department of Labor, 875 F.2d 791, 797 (10th Cir. 1989); United States v. Unitank Terminal Service, 724 F. Supp. 1158 (E.D. Pa. 1989). Words which are technical terms or terms of art are given their technical meaning. Tohono O’odham Nation v. Acting Phoenix Area Director, 22 IBIA 220, 231 (1992); Melsheimer v. Assistant Secretary for Indian Affairs, 11 IBIA 155, 160, 90 I.D. 165, 168 (1983). The Board adopts the following definitions of the terms “bona fide selling price,” “posted price,” and “offered price” as they are used in 25 CFR Part 226.

“Bona fide selling price” is easily defined through reference to general contract law. Something is “bona fide” when it is done “[i]n or with good faith; honestly, openly, and sincerely; without deceit or fraud.” See Black’s Law Dictionary, 5th Ed., 1979, at 160. A “selling price” is the price at which goods or services exchange hands.

As applied to 25 CFR Part 226, a “bona fide selling price” is the price, reached as a result of an honest, or “arms-length,” transaction, at which a willing oil producer will sell a given quantity and quality of crude oil to a willing buyer. Agreement to sell results in the formation of a contract between the buyer and the seller.

“Posted price” is a term of art in the oil and gas industry. The term refers to

a written statement of crude oil prices constituting an offer to purchase oil at that price circulated publicly among sellers and

buyers of crude oil in a particular field in accordance with historic practices. Although the formality of a printed price bulletin such as is published by major purchasers is not necessary for a price to be a valid posted price, the formality of a publicly circulated written notice is necessary. The requirement that the offer be in writing and publicly circulated eliminates oral offers and offers made only to specified producers. Accordingly, other than the published price bulletins of the type traditionally used by major oil companies, written offers to purchase constitute a “posted price” only if they are bona fide public offers of general applicability to crude oil producers in the field. For example, a letter from a purchaser to all crude oil producers in a field or in an area would constitute a posted price if the letter was a bona fide offer to purchase from all producers in that field or area. A written contract, of course, would not qualify as a posted price because it represents an agreement between a buyer and a specific producer, not a bona fide offer to purchase from all producers.

8 Williams and Meyers, Oil and Gas Law, 930 (1992), quoting Temp. Treas. Reg. § 150.4989-1(c)(8)(B). See also United States Department of Energy v. Osborn, 760 F.2d 282, 284 (Temp. Emerg. Ct. App. 1984).

An “offered price” may also be defined through general contract law. As stated in Black’s Law Dictionary, supra at 975, to make an offer is “to present [something] for acceptance or rejection.” The Restatement (Second) of Contracts, § 24 (1981) (Restatement) defines “offer” as “the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.” Section 52 of the Restatement provides that “[a]n offer can be accepted only by a person whom it invites to furnish the consideration.” Section 29, comment a, of the Restatement further provides that “[t]he offeror is the master of his offer; just as the making of any offer at all can be avoided by appropriate language or other conduct, so the power of acceptance can be narrowly limited.” Thus, an “offered price” is subject to the control of the offeror and personal to the offeree.

In the context of 25 CFR Part 226, an “offered price” is the price presented to a producer by a willing buyer for a given quantity and quality of crude oil. The producer can either accept or reject the “offered price.” Acceptance results in the establishment of a contract for sale between the parties; rejection results in no agreement. An “offered price” differs from a “posted price” in that an “offered price” need not be made in writing and to all producers. If it were made in writing and to all producers, it would be a “posted price,” and the term “offered price” would be rendered meaningless and superfluous, a situation which the Board attempts to avoid in construing a regulation. Cf., e.g., State of Utah v. Navajo Area Director, 21 IBIA 282, 291, 99 I.D. 39, 44 (1992) (An interpretation of a statute that renders part of the statute “surplusage, [is] a result generally looked upon with disfavor”).

Appellants contend that it is unclear whether the Area Director considered the floor price to constitute a “bona fide selling price,” a “posted price,” or an “offered price.” Accordingly, they address each possibility.

The Area Director argues that the basis for his decision was clear in the October 21, 1991, letters. In his answer brief at page 25, the Area Director states that “[t]he basis for the * * * decision may be found in the third reference point [in the regulation], the highest price offered by a major purchaser.” The Area Director then quotes from the decision letter:

This additional royalty is due because certain “major purchasers” made agreements with some of their sellers over a three year period * * * whereby the purchaser offered and paid more for certain oil than the price commonly called the “highest posted price.” Each time such a transaction occurred, it had the effect of establishing that price as the royalty price for all oil in the Osage Mineral Estate. Therefore each day one of these purchases took place, the royalty price was increased to the higher amount per barrel. [Emphasis added.]

The Board agrees with appellants that the basis for the Area Director’s decision was not clear in the October 21, 1991, letters. Various statements in the letters suggest that the Area Director interpreted the floor price to be either the highest bona fide selling price, highest offered price, highest price actually paid, or some combination of all of the terms. Furthermore, although the Area Director states in his answer brief that he considered the floor price to constitute the highest offered price, his quotation from the October 21 letters again appears to combine the highest price offered on the date of purchase and the highest price actually paid on that date. Accordingly, despite the Area Director’s statement that the basis of his decision was that the floor price constituted the highest offered price, the Board will examine all three prices set forth in 25 CFR 226.11.

The forward purchase floor price cannot constitute a “posted price” because it was not a written offer which was publicly circulated to all producers in the area or field. Instead, appellants state that the price was available only to those producers who could guarantee delivery of crude oil, in 1,000-barrel lots, to a transfer point acceptable to Farmland. Farmland’s May 31, 1991, letter to the Tribe confirms that its program was available to only a select group of producers. The Area Director does not dispute these statements.

The floor price just as clearly did constitute a “bona fide selling price” for those producers participating in Farmland’s program. It was a price arrived at through an arms-length transaction between a willing seller and a willing buyer under which the seller agreed to provide the buyer with a given quantity and quality of crude oil at a future date.

The floor price was not, however, paid to all producers. The Board has carefully examined 25 CFR 226.11(a)(2), as well as the remainder of Part 226, and finds nothing to suggest that the regulations intend that a

producer must pay royalty based on the contractual selling price paid to another producer, but not paid to it.

Therefore, the Board finds that the “bona fide selling price” can be the basis for the determination of the amount of royalty payable by or for a producer who actually received that selling price, but not for a producer who did not receive that price.

There is no dispute that the floor price was “offered” to some, but not all, producers. If the Area Director relied on the “offered price” language, he must have concluded that those producers who were not offered the floor price were required to pay royalties based on the highest price offered to any other producer. The Board cannot agree with this conclusion for two reasons.

[3] First, as mentioned above, general contract law provides that an offer is controlled by the offeror, is personal to the offeree, and can be accepted only by the person to whom it is made. After a careful analysis of 25 CFR Part 226, the Board holds that the regulations do not alter the general rules of contract law, and therefore do not require that a buyer of crude oil must make the same offer to every producer. If the regulations changed this rule, there would be no reason to distinguish between “posted” and “offered” prices. Accordingly, the Board holds that a price that is not offered to a producer is not an “offered price” as to that producer within the meaning and intent of 25 CFR 226.11(a)(2).

[4] Second, the Area Director’s conclusion overlooks the question of when the offer was made. In order to contend that he based his decision on the “offered price” language of the regulation, the Area Director must have concluded that the floor price was an “offered price” on the date of purchase. ^{7/} In the context of a sale through a forward purchase contract, the Board cannot agree that the date of the offer and the date of purchase coincided. The floor price was offered on the date it was made available to certain producers. Once those producers accepted the proposal, there was no longer an offer, but instead there were contracts between the parties for the future delivery of crude oil. See, e.g., Dime Box Petroleum Corp. v. Louisiana Land & Exploration Co., 717 F. Supp. 717, 720 (D. Colo. 1989) (“An offer and an assent manifested by act or conduct constitute a contract”); aff’d, 938 F.2d 1144 (10th Cir. 1991). ^{8/} Farmland did not offer

^{7/} From the limited information available to the Board, it appears likely that this conclusion is correct in regard to the historic practice for the sale of oil from the Osage mineral estate, and probably in regard to the continuing practice for the sale of a large percentage of the oil currently being produced and sold. It appears that Osage oil has been and still is, for the most part, sold on a daily or other frequent basis as it is produced. Under this practice, the offer to purchase would generally be made on the date of sale.

^{8/} Section 1 of the Restatement defines a “contract” as “a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.” Section 2 (1)

to purchase the contracted amount of oil on the actual date of delivery and purchase because the offer had been made and accepted months previously. Instead, both parties agreed to perform under their contract at the specified future date. 9/

This conclusion is further supported by Farmland's form agreement, which provides in part: "Note: Quantities of oil purchased in excess of the monthly contracted volume will be priced subject to Farmland's weighted average posted field price for like crude during the month of delivery." (Emphasis in original.) In other words, Farmland offered to pay a certain price for a certain amount of crude oil to be delivered at a certain time in the future. Farmland did not dismiss the possibility of purchasing more oil than was contracted for at that future date, but clearly advised its supplier that it would not offer the contractual floor price at the future date. The "offered price" in the future, i.e., on the date of purchase, was Farmland's weighted average posted field price, not the floor price established in the contract.

The Board concludes that Farmland's floor price was not a "posted price," constituted a "bona fide selling price" only as to those producers

fn. 8 (continued)

of the Restatement states that "[a] promise is a manifestation of intention to act * * * in a specified way, so made as to justify a promisee in understanding that a commitment has been made."

In the context of Farmland's forward purchase contracts, the "consideration" was the exchange of promises to perform at a specified future date. See Restatement, § 75, comment a, at 190: "In modern times the enforcement of bargains is not limited to those partly completed, but is extended to the wholly executory exchange in which promise is exchanged for promise. * * * The promise is enforced by virtue of the fact of bargain, without more."

The agreement of a producer to sell a specified quantity and quality of oil to Farmland at a specified future date is a contract. Either party to that contract would have legal recourse against the other party for failure to abide by the contract terms. There is no legal recourse for failure to make or accept an offer.

9/ The Restatement discusses performance under this type of contract in section 231.

Comment a, at page 196, states:

"Agreements involving an exchange of promises play a vital role in an economically advanced society. Ordinarily when parties make such an agreement, they not only regard the promises themselves as the subject of an exchange * * *, but they also intend that the performances of those promises shall subsequently be exchanged for each other."

Comment b, id., continues:

"Under a contract for the sale of goods, for example, the parties expect an exchange of the delivery of the goods by the seller and the payment of the price by the buyer, regardless of whether the price is payable before, at the same time as, or after delivery of the goods. As long as this is their expectation, the delivery of the goods and the payment of the price are to be exchanged under the exchange of promises, and it is immaterial when the price is payable."

who actually received that price, was not an “offered price” as to those producers to whom it was not made available, and was not an “offered price” on the date of purchase. Accordingly, the Area Director improperly concluded that the floor price could be used in the determination of royalties due from all producers on the date of purchase of oil under Farmland’s forward purchase program. 10/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the October 21, 1991, decisions of the Muskogee Area Director are reversed. 11/

Kathryn A. Lynn
Chief Administrative Judge

I concur:

Anita Vogt
Administrative Judge

10/ Under the Board’s analysis, 25 CFR 226.11(a)(2) requires a producer to pay royalty on the highest price available to it, whether or not it actually receives that price. Thus, if a major purchaser offers a price for oil to be delivered and paid for in the future, that “offered price” could be used in the determination of royalties on that future date for any producer to whom the offer was made, but who declined it. As the Area Director notes, there would be an enforcement problem in determining to whom the offer was made. This problem is, however, inherent in a regulation that speaks of “offered” prices.

11/ Because of the Board’s disposition of this case, appellants’ remaining arguments are not addressed.

APPENDIX A

Individual Appeals Filed From the Muskogee Area Director's Decision

Docket No. IBIA 92-18-A,	<u>Okie Crude Company v. Muskogee Area Director</u> (Lessee No. 1117)
Docket No. IBIA 92-21-A,	<u>Indianola Oil, Inc. v. Muskogee Area Director</u> (Lessee No. 897)
Docket No. IBIA 92-30-A,	<u>Ashar, Inc. v. Muskogee Area Director</u> (Lessee No. 1195)
Docket No. IBIA 92-37-A,	<u>Bledsoe Partners, Inc. v. Muskogee Area Director</u> (Lessee No. 370)
Docket No. IBIA 92-38-A,	<u>Don E. Van Dall v. Muskogee Area Director</u> (Lessee No. 365)
Docket No. IBIA 92-39-A,	<u>Hyperion Energy, L.P. v. Muskogee Area Director</u> (Lessee No. 1200)
Docket No. IBIA 92-40-A,	<u>Helmer & Sell v. Muskogee Area Director</u> (Lessee No. 159)
Docket No. IBIA 92-42-A,	<u>Charles J. Martin v. Muskogee Area Director</u> (Lessee No. 244)
Docket No. IBIA 92-44-A,	<u>Western Operating Company v. Muskogee Area Director</u> (Lessee No. 955)
Docket No. IBIA 92-45-A,	<u>Lamoreaux Homes, Inc. v. Muskogee Area Director</u> (Lessee No. 1153)
Docket No. IBIA 92-47-A,	<u>R.J. Lewis Oil Company v. Muskogee Area Director</u> (Lessee No. 1009)
Docket No. IBIA 92-48-A,	<u>William W. Billups and Frontier Productions v. Muskogee Area Director</u> (Lessee No. 1185)
Docket No. IBIA 92-49-A,	<u>Tindall Operating Company v. Muskogee Area Director</u> (Lessee No. 854)
Docket No. IBIA 92-50-A,	<u>Corley Oil, et al. v. Muskogee Area Director</u> (Lessee No. 772)
Docket No. IBIA 92-51-A,	<u>PPS Oil Company v. Muskogee Area Director</u> (Lessee No. 894)
Docket No. IBIA 92-52-A,	<u>Liberty Petroleum v. Muskogee Area Director</u> (Lessee No. 220)
Docket No. IBIA 92-53-A,	<u>Mark Helmer, d.b.a. Helmco Production Co. v. Muskogee Area Director</u> (Lessee No. 588)
Docket No. IBIA 92-54-A,	<u>David Sell, Sell Oil Company v. Muskogee Area Director</u> (Lessee No. 1019)
Docket No. IBIA 92-55-A,	<u>Rainbow Production Company v. Muskogee Area Director</u> (Lessee No. 289)
Docket No. IBIA 92-56-A,	<u>Charles E. Batschelett v. Muskogee Area Director</u> (Lessee No. 343)
Docket No. IBIA 92-57-A,	<u>B & T Oil Company v. Muskogee Area Director</u> (Lessee No. 919)

Docket No. IBIA 92-58-A, Centennial Petroleum, Inc. v. Muskogee Area Director
(Lessee No. 604)

Docket No. IBIA 92-59-A, Mix Riley Energy Company v. Muskogee Area Director
(Lessee No. 842)

Docket No. IBIA 92-60-A, St. Francis Resources, Inc. v. Muskogee Area Director
(Lessee No. 813)

Docket No. IBIA 92-61-A, Walsh Oil Co. v. Muskogee Area Director
(Lessee No. 1023)

Docket No. IBIA 92-64-A, Oil & Gas Supply v. Muskogee Area Director
(Lessee No. Not Known)

Docket No. IBIA 92-66-A, P.F. Hall Oil Company v. Muskogee Area Director
(Lessee No. 1144)

Docket No. IBIA 92-68-A, Geraldine A. Park v. Muskogee Area Director
(Lessee No. Not Known)

Docket No. IBIA 92-69-A, Divide Petroleum Company v. Muskogee Area Director
(Lessee No. 651)

Docket No. IBIA 92-70-A, Rose Downey, Downey Oil Company v. Muskogee Area Director
(Lessee No. 101)

Docket No. IBIA 92-71-A, T & M Oil Company v. Muskogee Area Director
(Lessee No. 133)

Docket No. IBIA 92-72-A, Dance Oil Company v. Muskogee Area Director
(Lessee No. Not Known)

Docket No. IBIA 92-73-A, Ashlock Dozer v. Muskogee Area Director
(Lessee No. 773)

Docket No. IBIA 92-75-A, Moze, Inc. v. Muskogee Area Director
(Lessee No. 1049)

Docket No. IBIA 92-77-A, Christeve Oil Company v. Muskogee Area Director
(Lessee No. 934)

Docket No. IBIA 92-78-A, A & T Oil v. Muskogee Area Director
(Lessee No. 863)

Docket No. IBIA 92-79-A, TPO, Inc., d.b.a. Gilcrease Hills Development Company v. Muskogee Area Director
(Lessee No. 130)

Docket No. IBIA 92-80-A, P.F. Hall Oil Company v. Muskogee Area Director
(Lessee No. 1144)

Docket No. IBIA 92-82-A, Delphine W. Rozen Trust v. Muskogee Area Director
(Lessee No. 308)

Docket No. IBIA 92-83-A, Plenergy Development Ltd. v. Muskogee Area Director
(Lessee No. 711)

Docket No. IBIA 92-85-A, Don J. Brown v. Muskogee Area Director
(Lessee No. 735)

Docket No. IBIA 92-86-A, R.T. McClintock v. Muskogee Area Director
(Lessee No. 423)

Docket No. IBIA 92-87-A, James E. Russell Petroleum, Inc. v. Muskogee Area Director
(Lessee No. 714)

Docket No. IBIA 92-91-A, C & T Energy Co. v. Muskogee Area Director
(Lessee No. 1095)

Docket No. IBIA 92-93-A, Halos Oil & Gas Corp. v. Muskogee Area Director
(Lessee No. 190)

Docket No. IBIA 92-94-A, Braden-Deem, Inc. v. Muskogee Area Director
(Lessee No. 1174)

Docket No. IBIA 92-95-A, Melvin E. Acott, et al. v. Muskogee Area Director
(See Appendix B)

Docket No. IBIA 92-96-A, A.E. Basinger, Jr., et al. v. Muskogee Area Director
(See Appendix C)

Docket No. IBIA 92-97-A, Kaye Lowry v. Muskogee Area Director

Docket No. IBIA 92-99-A, Union Oil Company of California, d.b.a. UNOCAL v. Muskogee Area Director
(Lessee No. 364)

Docket No. IBIA 92-101-A, O'Neal Drilling Company v. Muskogee Area Director
(Lessee No. 718)

Docket No. IBIA 92-103-A, Texaco, Inc. v. Muskogee Area Director
(Lessee No. 357)

Docket No. IBIA 92-110-A, K.C. Oil Company v. Muskogee Area Director
(Lessee No. 492)

APPENDIX B

Appellants Appearing in Melvin E. Acott, et al. v. Muskogee Area Director,
Docket No. IBIA 92-95-A

Acott, Melvin E., Lessee No. 2
 Alexander, Howard, Lessee No. 7
 Alpha Oil Company, Lessee No. 10
 American International Energy Corp., Lessee No. 1072
 Arrowhead Exploration Co., Inc., Lessee No. 435
 Asher Corporation, TIP, Lessee No. 99
 Bach, Dean, Lessee No. 1030
 Bach, Earl D., Lessee No. 23
 Barnett, James E., Lessee No. 1183
 Barthel, Joe, Lessee No. 604
 BBR Oil Corporation, Lessee No. 19
 Beckham & Butler Trust, Lessee No. 956
 Behlen, Inc., Lessee No. 27
 Belport Oil, Inc., Lessee No. 1079
 Bets Oil & Gas, Lessee No. 616
 Big Four Petroleum Company, Lessee No. 31
 Billy B. Oil Company, Lessee No. 1140
 BOJE Oil Company, Lessee No. 684
 Booth, John, Lessee No. 34
 Boradi Petroleum Corporation, Lessee No. 35
 Brown, Perry B. and Marguerite K., Lessee No. 566
 Buck Creek Associates, Lessee No. 774
 Buttram Energies, Inc., Lessee No. 41
 C & C Oil Company, Lessee No. 1081
 Carman & Sell, Lessee No. 1001
 Carman, Frances J., Lessee No. 46
 Carroll, David, and William R. Lynn, Lessee No. 1177
 Carter, E.W., Lessee No. 48
 C.C.F. Production, Lessee No. 1046
 Ceja Corporation, Lessee No. 51
 Cerq, Inc., Lessee No. 1206
 Chambers/Hendrix Oil and Gas, Inc., Lessee No. 750
 C.H.C. Oil Company, Lessee No. 811
 Chinn, Larry, Lessee No. 55
 Chinn, Roland and Velma, Lessee No. 56
 Clemishire, Bob, Lessee No. 58
 Clemishire, Don, Lessee No. 59
 Clemishire, Jerry Lee and Susan, Lessee No. 61
 Clemishire Oil Company, Lessee No. 1100
 Collier, H.R., Lessee No. 65
 Colpitt, Charles H., Lessee No. 66
 Condryn Oil Company, Lessee No. 914
 Continental Oil and Refining Company, Lessee No. 67
 Cordova Resources, Inc., Lessee No. 1075
 Cummings, Mary Josephine, Lessee No. 77
 D & P Oil Co., Inc., Lessee No. 225

Davis/Osage Corporation, Lessee No. 819
 DCX Resources, Lessee No. 460
 Dellabough, Grant, Lessee No. 764
 DeMier, Fred, Lessee No. 91
 Dervin, Lee, Lessee No. 1134
 Discovery Energy, Inc., Lessee No. 1148
 D.M.D.R. Resources, Lessee No. 1107
 Doak Corporation, Lessee No. 1054
 Doolittle, C.A., lessee No. 20
 Doolittle, Patricia B., Lessee No. 1083
 Drummond & Hull, Lessee No. 266
 Elliott Oil Corporation, Lessee No. 109
 Emerson Oil Company, Lessee No. 725
 Endicott, Melvin F., Lessee No. 110
 Epperson, John, Lessee No. 1028
 Equus Energy, Inc., Lessee No. 1160
 Eyler, Nelson, Lessee No. 115
 Fallin Oil Company, Lessee No. 14
 Fell Oil and Gas Company, Lessee No. 116
 Fieldstone Exploration Company, Lessee No. 609
 Four Brothers, Inc., Lessee No. 333
 Fox, Jimmy D., Lessee No. 120
 Gardner Oil Company, Lessee No. 125
 Glasgow, William R., Lessee No. 1067
 Glenn, Hoyt C., Lessee No. 134
 Golden Resources, Inc., Lessee No. 135
 Gopher Oil Company, Lessee No. 136
 Graham Oil Company, Lessee No. 139
 Graves, J.M., Lessee No. 138
 Graves, John G., Lessee No. 1205
 Great Southern Exploration, Inc., Lessee No. 514
 Greenwood Oil Company, Lessee No. 142
 Groom, Mary E., Lessee No. 1199
 Gullett, Loyd G., Lessee No. 147
 H and W Drilling Company, Lessee No. 148
 Haiti Oil Company, Lessee No. 954
 Hall, Charles I. and Barbara K., Lessee No. 817
 Hambright, Melvin, Lessee No. 151
 Harrington, Bill B., Lessee No. 653
 Harris, Thomas P., Jr. , Lessee No. 478
 Hartshorn, Mary, Lessee No. 156
 Haught, Harold, Lessee No. 419
 H.A.W.C. Oil Company, Lessee No. 770
 Hayes, R.D., Lessee No. 158
 Hays, Stanley L., Lessee No. 1123
 Helmer, Ben, Lessee No. 1068
 Henley, Orville, Production, Lessee No. 572
 Herrmann and Ikenberry, Lessee No. 160
 Hobo Oil & Gas Company, Lessee No. 363
 Holt, Andrew "Mickey", Lessee No. 485
 Horn, Bobby G., Lessee No. 597
 Horn, Clara Jo, Lessee No. 165

Howell's Well Service, Inc., Lessee No. 692
 H.S. Production, Lessee No. 6
 Huff, Stephen G., Lessee No. 742
 Hull Oil Company, Lessee No. 171
 Hulse, Steve and Frank, Lessee No. 172
 Hurd Oil Company, Lessee No. 173
 Ingersoll Oil, Inc., Lessee No. 176
 J. Petroleum, Inc., Lessee No. 181
 James Oil Company, Lessee No. 184
 Jay Petroleum, Inc., Lessee No. 542
 Jenkins, Charles L., d.b.a., Jenkins Drilling Co., and Evelyn Simmons, Lessee No. 109
 Johnson Exploration, Inc., Lessee No. 1088
 Jones, Michael W., Lessee No. 552
 K & K Oil Company, Lessee No. 88
 Kehler, Robert N., Lessee No. 1116
 Kennedy, Howard E., Jr., Lessee No. 1085
 Kinsey, David J. and Leesa K., Lessee No. 1057
 K.O.D. Enterprises, Inc., Lessee No. 192
 Krebbs, Bruce and Nathan, Lessee No. 796
 Krumme Oil Company, Lessee No. 204
 KWB Oil Property Management, Lessee No. 195
 L & J Welding & Machine Service, Lessee No. 412
 Lamamco Drilling Company, Lessee No. 724
 Lavery, Tom, Lessee No. 406
 LBG Operating Company, Lessee No. 1108
 Leopold, Dick, Lessee No. 218
 Lester, Donald F., Lessee No. 219
 Link Oil Company, Lessee No. 223
 Loop, Paul R., Lessee No. 224
 MAC Engineering & Operating Co., Lessee No. 1179
 Maggard Oil Company, Inc., Lessee No. 239
 Marmac Resources Company, Lessee No. 601
 Mayfield Production, Lessee No. 396
 McCabe, John Q., Lessee No. 490
 McCabe, William G., Lessee No. 228
 McClurkin, C.E., Lessee No. 229
 McIsaac, John, Inc., Lessee No. 802
 McPherson, Michael, Lessee No. 463
 Meyer Oil Company, Inc., Lessee No. 249
 Min-Tex Oil Corporation, Lessee No. 251
 Mission Oil & Gas, Lessee No. 913
 Mix Energy Limited IV, Lessee No. 759
 Moore, Bonnie Rae, Lessee No. 252
 Mounts, Blanche L., Lessee No. 255
 Nadel and Gussman, Lessee No. 257
 Neff, George and Thomasine, Lessee No. 907
 Nossaman and Nossaman, Lessee No. 940
 O'Donnell, Bill C., Lessee No. 263
 Oil of Oy Vay, Inc., Lessee No. 1122
 Oil Operations, Inc., Lessee No. 264
 Oil Patch Energy Co., Lessee No. 149

Oklahoma S.I., Lessee No. 650
 Okmar Oil Co., Lessee No. 265
 Palisades Investores, Inc., Lessee No. 1159
 Park 1987 Revocable Living Trust, Lessee No. 270
 Park, Kenneth Y., Lessee No. 1066
 Park, William M., Lessee No. 402
 Parks, John L., Lessee No. 887
 Parsage Oil Co., Lessee No. 271
 Pease, George, Jr., Lessee No. 273
 Pease, George William III, Lessee No. 856
 Perkins Energy Company, Lessee No. 276
 Petrogas Exploration, Lessee No. 687
 Phillips, Warren P., Lessee No. 487
 Pringle Operating Company, Lessee No. 286
 Quench Oil & Gas, Inc., Lessee No. 1102
 Roark, David, Lessee No. 300
 Robbins, Tom, Lessee No. 397
 Robinowitz Oil Company, Lessee No. 304
 Rougeot Oil and Gas Corporation, Lessee No. 307
 S & B Oil Company, Lessee No. 529
 Sallee Oil Corporation, Lessee No. 1165
 Sand Springs Oil and Gas Company, Lessee No. 311
 Schell, Sam H., Lessee No. 314
 Schroeder, Donald, Lessee No. 861
 Selby, Darrel R., Lessee No. 622
 Sellers Family Partnership, Lessee No. 538
 Service Drilling Company, Lessee No. 318
 Seville Drilling Co., Lessee No. 925
 Shafco, Inc., Lessee No. 319
 Shafer, Clyde J., Lessee No. 801
 Sills, Stephen W., Lessee No. 1137
 Siosi Oil & Gas Company, Lessee No. 1025
 Siosi Oil Company, Lessee No. 329
 6-T Oil Company, Lessee No. 723
 Smith and Smith Petroleum Corporation, Lessee No. 331
 Smith, Doug, Lessee No. 1091
 Sneed, William A., Lessee No. 258
 Sooner Oil Company, Lessee No. 334
 Southland Energy Corporation, Lessee No. 335
 Sparks, Greg, Lessee No. 575
 Spess Oil Company, Lessee No. 337
 Spruce Development Corporation, Lessee No. 69
 Spurgeon, William C., Lessee No. 1112
 Staats, John B., Lessee No. 541
 Staats, W.N., Lessee No. 338
 Stanton, Gladys, Lessee No. 339
 Storck, Omer E., Revocable Living Trust, Lessee No. 345
 Storm Exploration, Inc., Lessee No. 1015
 Strike Axe Oil & Gas Corporation, Lessee No. 754
 Swift Energy Company, Lessee No. 359
 Tallgrass Petroleum Corp., Lessee No. 1172
 Tatum, Larry D., Lessee No. 1110

Thomas, Ellis and Glenna, Lessee No. 829
Toco Oil and Gas Company, Inc., Lessee No. 182
Toklan Oil and Gas Corporation, Lessee No. 1218
Toomey Oil Company, Inc., Lessee No. 359
Topco, Inc., Lessee No. 821
Vail, C. Scott, Lessee No. 441
Vancol Oil Co., Inc., Lessee No. 611
Vantage Point Operating, Lessee No. 1150
Viv-Ed Oil Corporation, Lessee No. 657
Wachtman and Schroeder, Lessee No. 367
Wall, Shelby, Lessee No. 369
WHAM I, Lessee No. 531
Whiteman Industries, Inc., Lessee No. 375
Williams, Doyle, Lessee No. 379
W.M.K. Oil Company, Lessee No. 941
Woodstead Petroleum Corp., Lessee No. 1061
ZCA Gas Gathering Company, Inc., Lessee No. 471

APPENDIX C

Appellants Appearing in A.E. Basinger, Jr., et al, v. Muskogee Area Director
Docket No. IBIA 92-96-A

Basinger, A.E., Jr., Lessee No. 24
D & C Oil Company, Lessee No. 80
D & J Oil Company, Lessee No. 1016
Dewey Enterprises, Inc., Lessee No. 596
Dove Petroleum, Lessee No. 1029
ECC Energy Corporation, Lessee No. 106
Greene, David L., David L. Greene, Inc., and David L. Greene Operating Company, Inc.,
Lessee No. 786
Holt, Mildred, Trustee of the James C. Holt Revocable Trust, Lessee No. 909
Javine Company, Lessee No. 185
KAW Company, Lessee No. 1167
PEDCO Resources Company, Lessee No. 1181
Phillips Petroleum Company, Lessee No. 896
PORTCO, Inc., Lessee No. 855
Producers Oil Company, Lessee No. 287
Ross, Louis A., Jr., Lessee No. 326
Rountree, John H., Lessee No. 766
Short, Mark G., and Carl O. Short, d.b.a. Short Oil Company, Lessee No. 327
Superior Welding, Inc., Lessee No. 901